

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 24**

McALLISTER TOWING AND  
TRANSPORTATION CO, INC.  
PUERTO RICO BRANCH

and

INTERNATIONAL ORGANIZATION OF  
MASTERS, MATES & PILOTS,  
INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, AFL-CIO

CASE NO. 12-CA-146711

**McALLISTER TOWING AND TRANSPORTATION CO., INC.  
PUERTO RICO BRANCH  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

TO THE HONORABLE BOARD:

COMES NOW, McAllister Towing and Transportation Co., Inc., Puerto Rico Branch, (hereinafter "**McAllister**" or "**the Company**"), through the undersigned counsel, and pursuant to Section 102.46 of the Honorable Board's Rules and Regulations very respectfully files the following exceptions to the Administrative Law Judge's Decision and Order, and Recommended Notice issued on May 25, 2016. McAllister exceptions to:

1. The Administrative Law Judge's Decision (ALJD) exclusion of the term "**honest**". (ALJD p. 5 Lines 10-11) The description should read that "the Company should make an **honest** effort to grant the employees eight 8 hours of uninterrupted rest at home." (Emphasis ours)

2. The ALJD exclusion of clarifying that the specific foul language utilized by Capt. José Colón ("Colón") against his acting supervisor, to his direct supervisor Capt. Felix Feliciano were "**mother fuckers**" and "a "**bunch of shits**". (Emphasis ours) (ALJD p. 9, L. 41-43)

3. The ALJD exclusion of clarifying that those dispatchers that Colón called “**mother fuckers**” and “a “**bunch of shits**” were at the time their acting supervisors. (Emphasis ours) (ALJD p. 10, L. 41-43)

4. The ALJD exclusion of stating that (1) Colón admitted in writing to Capt. Félix Feliciano, his direct supervisor, that he violated Company policy and professional conduct towards the dispatchers by calling them “**motherfuckers**” and “**a bunch of shits**”; (2) by utilizing strong language against the dispatchers; (3) by, in a disrespectful manner telling the dispatcher that he could log the incident in the **Bible**; and (4) by utilizing foul language in his text to Capt. Felix Feliciano, among other things. (Emphasis ours) (ALJD p. 10, L. 10-25)

5. The ALJD incorrect statement that Colón denied calling the dispatchers “**motherfuckers**”. In fact this is particularly troubling because Colón testified before Capt. Feliciano, and Capt. Feliciano’s testimony was never disputed by Colón or any other witness. (ALJD p. 10, L. 45-50)

6. The ALJD exclusion and incorrect assessment stating that Colón could not leave the ship, when it is a material fact that he could, but at his own risk. (ALJD p. 12, 1-5)

7. The ALJD exclusion of stating that the Company has an obligation to make an **honest** effort. (Emphasis ours) (ALJD p. 12, l. 49-50)

8. The ALJD exclusion that the “use of challenging tone to Ramos and lack of respect towards him” was telling him to log Colón’s complaint in the **Bible**, which is incredibly insulting, not to mention the fact that he told Capt. Feliciano that Ramos was a “motherfucker” and a “shit”. These exclusion are extremely material because the ALJD is diminishing the seriousness of the admitted violations which could/should have resulted in a termination, but simply resulted in a written warning. (ALJD, p. 15, l. 21-25)

9. The ALJD exclusion that Colón failed to timely respond to the dispatcher. (ALJD p. 14, l. 40-45) This is particularly puzzling given that the ALJD concluded that Colon's admission of wrong doing was precisely his lack of timely responding to the dispatcher's calls. (ALJD p. 15, l. 43-45)

10. The ALJD exclusion and incorrect conclusion that the nature of his adverse employment action was unrelated to Colón's use of the terms "**motherfucker**" and "**a bunch of shits**" in reference to his acting supervisor when he was talking to his direct supervisor. (ALJD p. 15, l. 35-40) Further, it is perplexing that the ALJD did not even reference Colón's insolent attitude towards the dispatcher when he aggressively told him to log his complaint in the Bible.

11. The ALJD improper assessment of how the Company should have made the written warning and the evaluation form when as an Administrative Law Judge his sole purpose is to adjudicate the law and not sit as a super-personnel department reexamining the Company's legitimate business decisions. (ALJD p. 10, l. 30-40; p. 15, l. 15-25 and 30-35)

12. The ALJD exclusion that Colon's insulting statement to the dispatcher to log his complaint in the Bible, was corroborated by Mr. Javier González Díaz. (ALJD p. 8, l. 1-20)

13. The ALJD perplexing conclusion that Colón, who has been a captain since approximately twenty (20) years before the incident, and knew that he had already enjoyed the 8 hour rest at home on the same 24 hour period in which the incident occurred, "honestly" thought that he was entitled to stay at home for another 8 hours in the same 24 hour period. This simply defies logic. (ALJD p. 5, l. 15-20; p. 13, l. 20-30)

14. The ALJD conclusion that Colón engaged in concerted or protected conduct in violation of Section 7 of the National Labor Relations Act. (ALJD p. 12-16)

15. The ALJD conclusion that Colón's alleged protected activity was not so abusive that he lost his protection under de Act. (ALJD p. 12-16)

16. The ALJD conclusion that McAllister discriminated against Colón in violation of Sec. 8(a) (3) of the Act. (ALJD p. 12-16)

17. The ALJD conclusion that McAllister had an antiunion animus against Colón. (ALJD p. 12-16)

18. The ALJD conclusion that McAllister did not establish by a preponderance of evidence that it would have taken the same action against Colón regardless of his union affiliation. (ALJD p. 12-16)

19. The ALJD conclusion that the General Counsel was able to show that the basis for the adverse employment action was Colón's protected conduct. (ALJD p. 12-16)

20. The ALJD conclusion that the fact that in the written warning they utilized the term challenging behavior instead specifically saying the words motherfucker and bunch of shits somehow protects Colón from being justly admonished. In facts this is yet another example of the ALJD acting as a super-personnel department reexamining the Company's legitimate business decisions. (ALJD p. 15, l. 25-45)

21. The ALJD failed to include in the Decision that Capt. Eduardo Iglesias started working for McAllister in the year 2002.

**WHEREFORE**, McAllister very respectfully requests this Honorable Board decline to adopt the Administrative Law Judge's Decision issued in the case of caption and to dismiss the objected elements made by Respondent in the brief.

**CERTIFICATE OF SERVICE:** I hereby certify that on this same date a true copy of this document has been sent by email to Gabriel A. Terrasa, Esq., gterrasa@tslawmd.com,

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**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 12 day of July 2016.

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